

April 14, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Via Electronic Filing

**Re: Oral Ex Parte Presentation: In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended; CC Docket No. 99-273**

Dear Ms. Dortch:

This notice is being filed pursuant to Section 1.1206(b)(2) of the Commission's rules. On April 13, 2004, the undersigned counsel to LSSi Corp. ("LSSi") and Ed Tierney, Vice President of Marketing of LSSi, met with Bill Dever and Rodney McDonald of the Wireline Competition Bureau. The purpose of the meeting was to provide LSSi's perspective on the issues pending before the Commission in the current reconsideration phase of the above-captioned proceeding and, in particular, to respond to the February 13, 2004 written *ex parte* filed by BellSouth Corporation.<sup>1</sup>

Addressed at the meeting were issues related to the above-captioned docket. LSSi noted that it has been more than three years since BellSouth and other LECs submitted their petitions for reconsideration of the Commission's *Directory Listings Order*.<sup>2</sup> BellSouth and the other petitioners claim that the Commission must reconsider or clarify its ruling that DA listings, once obtained, may be used for "any lawful purpose," subject only to the applicable provisions of the Act and the Commission's rules, and that the tariff and contractual restrictions the LECs seek to impose on the use of DA listings are necessary to protect the public. Yet, during the past three years, the sky has not fallen, and there has been no massive influx of consumer complaints to the Commission on this issue. Indeed, only a handful of LECs have sought reconsideration or clarification.

One set of issues raised by BellSouth in its February 13, 2004 written *ex parte* centered around the resale and multiple use of directory assistance ("DA") listings. LSSi is opposed to any LEC-imposed restriction on resale or multiple use. As explained during our meeting, LSSi does not

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<sup>1</sup> Letter from Angela N. Brown, Regulatory Counsel for BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273 (filed February 12, 2004) ("BellSouth Letter").

<sup>2</sup> *In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, First Report and Order, FCC 01-27 (rel. Jan. 23, 2001 ("*Directory Listings Order*"))

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resell DA listings. Although BellSouth claims that the statute flatly prohibits the resale of DA listings to directory publishers, LSSi has an agreement with another RBOC who permits an acquiring party to use DA listings for directory publishing. This, in LSSi's view, is consistent both with the statute, and with the Commission's ruling in the *Directory Listings Order*, that DA listings, once acquired may be used for "any lawful purpose." In any event, LSSi believes that the Commission's long-standing policy disfavoring restrictions on resale should be applied broadly, and carrier-imposed restrictions on the resale of DA listings should be prohibited. With respect to BellSouth's claim that LECs should be allowed to prohibit the multiple use of DA listings, LSSi noted that acquiring and maintaining separate DA databases for each customer it would be altogether impracticable in the context of a national DA database provider such as LSSi. Once LSSi obtains DA listings from BellSouth or another carrier, the data is "scrubbed" to eliminate duplicate, incomplete or otherwise erroneous records, and DA listings from multiple sources are combined into a national DA database. LSSi's customers, who may provide different types of DA services, access the combined database, either through standard interfaces or by custom programs written to the API's provided by LSSi. A prohibition on multiple use would require LSSi to obtain one copy of each LECs' DA listings for each customer, to create and maintain a separate national DA database for each of its existing customers, and to start the entire process from scratch any time it signed an agreement with a new customer for national DA database services. LSSi observed that the LECs seeking to prohibit multiple use are advocating a standard they themselves do not observe. DA listings are obtained from a single source – the LECs' service order entry systems. Whether a LEC uses that data to create multiple databases (one for DA listings and a separate one for directory publishing) or maintains all of the data in a combined database is wholly within the LEC's discretion.

BellSouth, citing the need to protect the privacy interests of its customers, asserts that LECs must be permitted to prohibit the use of DA listings for any non-DA purpose "such as direct marketing, telemarketing and sales solicitation." LSSi made several observations regarding this issue:

- If LECs were permitted to prohibit the providers of national DA database services or their customers from using DA listings for such purposes as "sales solicitation," they would be enforcing on competing DA providers a restriction that does not apply to their own local DA offerings. When a LEC customer calls 411 and asks for the listing for the Smith residence at 111 Main Street, the LEC DA operator does not say "Are you planning to use this number for telemarketing or sales solicitation? If so, I won't provide it to you."
- Different LECs may define "Directory Assistance" differently, and they may not all seek to impose the same restrictions on the use of DA listings for what are variously termed "advanced DA" "enhanced DA" or non-DA use. Allowing each LEC to apply its own definitions and restrictions on the use of its customers' name, address and phone numbers is plainly unworkable in an environment where numbers are portable and competing DA providers seek to offer innovative services that customers value.
  - LSSi is capable of using DA listings to deliver "CNAM" (caller name") service, but there is a difference of opinion between LSSi and a LEC over whether this is a permissible "reverse lookup" use of DA data or an impermissible "non-DA" use.
  - With number portability (including wireline-to-wireless and vice versa) a given DA listing (name, address and phone number) could be subject to one set of LEC-

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imposed DA limitations immediately prior to porting and a completely different set of rules (either more liberal or more restrictive) later in the same business day.

- The FTC's revised Telemarketing Sales Rule, together with the FCC's implementation and enforcement of its own set of rules implementing the national "do-not-call" list have been successful and go a long way toward the goal of providing a consistent legal framework that addresses consumers' concerns with telemarketing on a national level. Any need that may have existed for specific restrictions on the use of DA listings for telemarketing has either disappeared entirely or can be addressed in the broader framework of the telemarketing rules.
- LSSi noted that a flat ban on the use of DA listings for "telemarketing" sweeps too broadly. LSSi gave some hypothetical examples of beneficial uses of DA listing data that could run afoul of a LEC's prohibition on "telemarketing" or "sales solicitation" yet be highly valued by DA database customers and consumers alike (e.g., product warranty and safety-related calls, or calls permitted under the "established business relationship" exception to the do-not-call rules).

Finally, LSSi noted that BellSouth documented only two instances where its DA listings *may* have been used in a manner that was objectionable to BellSouth's subscribers. LSSi noted that LEC DA listings are not the only source of name, address and phone number data, and that BellSouth's assertion that a customer's non-published phone number was somehow "unencrypted" by a party with access to BellSouth's DA database was purely speculative. There are equally plausible alternative explanations (e.g., that the number was obtained from a non-BellSouth source and matched to the name and address). Even a bullet-proof encryption algorithm combined with a rigorously enforced tariff or contractual prohibition on the use of DA listings for telemarketing would not eliminate the problem of a few non-published numbers being gathered from other sources and used for telemarketing or prevent the use of name, address and phone numbers in furtherance of fraudulent schemes such as that described in the BellSouth February 13, 2004 *ex parte*.

Accordingly, LSSi recommends that the Commission deny BellSouth's petition for reconsideration or clarification and reaffirm the *Directory Listings Order*.

Sincerely,

**Gray Cary Ware & Freidenrich LLP**

[Filed electronically]

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cc: Mr. Dever, Mr. McDonald